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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,563	01/25/2002	Michael Primm	13048:12	4658
34456	7590	09/27/2005	EXAMINER	
TOLER & LARSON & ABEL L.L.P. 5000 PLAZA ON THE LAKE STE 265 AUSTIN, TX 78746			CARDONE, JASON D	
			ART UNIT	PAPER NUMBER

2145

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,563

Applicant(s)

PRIMM ET AL

Examiner

Jason D. Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/25/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/24/02, 1/24/03, 2/7/07, 8/25/04, 7/29/04, 9/9/05 + 9/9/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 20 is objected to and rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 20 discloses a "program storage device", which is not enabled by the specification to establish a peer-to-peer relationship.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 7-12, 19 and 25-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 7-12 and 19 disclose "instruction set". The instruction set is not tangibly limited to a product that is within and enabled by the specification. Claims 25-31 disclose a directory, which is not tangibly limited to a product that is within and enabled by the specification. Therefore, claims 7-12, 19 and 25-31 are not limited to tangible embodiments.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 4-7, 9-13 and 19-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Thamattoor, USPN 6,658,595.

7. Regarding claim 1, Thamattoor discloses a method for establishing a peer-to-peer review relationship between a first and a second network-enabled appliance, the first and the second network-enabled appliances being connected to an interconnected network, the method comprising:

determining the address of the second network-enabled appliance with the first network-enabled appliance, the address of the second network-enabled appliance being associated with the interconnected network [ie "A" being the first network-enabled appliance and "B" being the second network-enabled appliance, Thamattoor, col. 2, lines 56-67, col. 3, lines 24-43 and col. 4, lines 53-67];

sending a ping message to the second network-enabled appliance from the first network-enabled appliance through the interconnected network [Thamattoor, col. 5, lines 4-15];

selectively responding to the ping message from the first network-enabled appliance with the second network-enabled appliance [Thamattoor, col. 5, lines 4-15];

selectively establishing a periodicity between the sending of subsequent periodic ping messages [Thamattoor, col. 5, lines 16-48]; and

periodically selectively sending subsequent periodic ping messages from the first network-enabled appliance to the second network-enabled appliance through the interconnected network and where the time interval between the subsequent periodic ping messages is associated with the established periodicity [Thamattoor, col. 5, lines 31-48 and col. 8, lines 11-24].

8. Regarding claim 4, Thamattoor further discloses selectively sending a notification message in the event that an expected periodic ping is not received [Thamattoor, col. 5, lines 31-48 and col. 8, lines 11-24].

9. Regarding claim 5, Thamattoor further discloses the notification method is sent to a remote location [ie. peer B recovery action by sending alarm, Thamattoor, col. 6, lines 1-24 and col. 9, lines 4-26].

10. Regarding claim 6, Thamattoor further discloses the notification method is sent to another network-enabled appliance connected to the interconnected network [Thamattoor, col. 6, lines 1-24 and col. 9, lines 4-26].

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11. Regarding claims 7, 9-13 and 19-31, claims 7, 9-13 and 19-31 have similar limitations as claims 1 and 4-6. Therefore, the similar limitations are disclosed under Thamattoor for the same reasons set forth in the rejection of claims 1 and 4-6 [Supra 1 and 4-6].

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 2, 3, 8 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thamattoor in view of Scheetz et al. ("Scheetz"), USPN 5,822,302.

15. Regarding claim 2 and 3, Thamattoor substantially discloses the claimed invention. Thamattoor does not specifically disclose the type of ping message used

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(HTTP POST or FTP). However, Scheetz, in the same field of endeavor, discloses a ping message uses an HTTP POST or FTP methods. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate specific ping messaging, taught by Scheetz, into the peer system, taught by Thamattoor, in order to improve the speed of notification of outages.

16. Regarding claims 8 and 14-18, claims 8 and 14-18 have similar limitations as claims 2 and 3. Therefore, the similar limitations are disclosed under Thamattoor-Scheetz for the same reasons set forth in the rejection of claims 2 and 3 [Supra 2 and 3].

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D. Cardone whose telephone number is (571) 272-3933. The examiner can normally be reached on Mon.-Thu. (6AM-3PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason D Cardone
Primary Examiner
Art Unit 2145

September 24, 2005